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IN THE

SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1979

No. 795940

ROOSEVELT ESAU TURNER,

Petitioner,

v.

J.P. MITCHELL, WARDEN

Respondent.

PETITIONER'S BRIEF IN SUPPORT TO GRANT OF CERTIORARI

Reply Brief

ROOSEVELT ESAU TURNER, ASSISTED

VIRGINIA STATE PENITENTIARY
RICHMOND, VIRGINIA 23261

By Donald M. Carter

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OPINIONS BELOW

All opinions have been set forth in petitioner's original petition for a writ of certiorari; i.e. exhaustion of State remedies, Appendix "C"; the Memorandum of the United States District Court for the Eastern District of Virginia; United States Court of Appeals for the Fourth Circuit, Appendix "A"; and petition for rehearing, Appendix "B".

QUESTION PRESENTED

WHETHER AN INCULPATORY STATEMENT ALLEGEDLY GIVEN TO AN INVESTIGATING OFFICER AND INTRODUCED AT PETITIONER'S TRIAL WAS ADMISSIBLE BECAUSE IT WAS OBTAINED IN VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHTS AND PURSUANT THE GOVERNING PRINCIPLES OF MIRANDA v. ARIZONA, 384 U.S. 436, 475? AND, DID THE ADMISSION OF SAID STATEMENT VIOLATE PETITIONER'S PRIVILEGE AGAINST SELF-INCRIMINATION?

STATEMENT OF FACTS

At petitioner's trial on May 19, 1977, his depraved stepdaughter, Artorita Smith Bey, testified that on January 4, 1977, she had seen her stepfather, Roosevelt Esau Turner, shoot her mother, Ruth Anna Turner, after she herself had been shot in the back and paralized. Ms. Bey claimed to have turned over after having been shot and looked up and saw said shooting. (Tr. at 30-32)

No weapon was ever found, and no weapon was alleged to have belonged to the petitioner. However, Ms. Bey also claimed that she had seen petitioner wearing a hat which was found by a policeman in the back seat of the automobile that the deceased was shot in. (Tr. at 28)

Petitioner contends that since he and his wife were attempting to re-establish their marriage and he frequently rode with his wife in the automobile that he had left said hat in the automobile on an occasion prior to the fatal shooting of his dear and beloved wife.

Petitioner's alibi defense consisted of the fact that he had been at his mother's house at the time of the shootings, and that upon hearing that his wife had been shot on the eleven O'Clock news he asked one of his sisters to take him into Richmond, Virginia to inquire as to his wife's condition. Petitioner was stopped by police on his way to Richmond. (Tr. at 51-101) Petitioner's two brothers, his sister, and mother all testified to these facts.

In order to impeach petitioner's alibi defense and his witnesses the prosecution introduced detective Gery on rebuttal and he claimed that petitioner had told him the following day after the alleged crimes that he had been in a beer Tavern called Gregory's all the evening of January 4, 1977. (Tr. at 116-118)

Detective Gery alleged that the day after the shootings petitioner had been advised by said detective of his Miranda rights, (citation omitted) and that at this late time the petitioner had made the inculpatory statement of having been in Gregory's Tavern, instead of at his mother's house where he really was, and

this statement was made in open court in the presence of the jury. Petitioner states that while detective Gery was testifying to the jury that he had some papers in his hands, which were never introduced as evidence, and he was waiving these in a suggestive manner while exclaiming that he had given petitioner his Miranda rights (citation omitted), and that these papers were also the notes that he had taken and contained the testimony that he was giving to the jury. (Tr. at 116-118)

However, the prosecution for the State did not bear its burden of establishing the isolated circumstances under which the interrogation took place without the presence of counsel for petitioner and did not make available corroborated evidence of warnings given during this incommunicado interrogation as clearly stated as one of the principles that govern Miranda v. Arizona. Accordingly, no such corroboration of said Miranda rights has ever been established by the State. Petitioner never gave detective Gery any statements; he was not given any Miranda warnings either.

Petitioner's counsel, Mr. Simmons, never inquired of him concerning the waiver or giving of any rights warnings pursuant Miranda. Petitioner must concede that in his counsel's ineffectiveness in assisting him that said counsel did stipulate that petitioner had been properly advised. However at this time petitioner was entirely ignorant of the legal consequences that said stipulation by his counsel would have on the outcome of his trial and the violation of his Constitutional rights, and he was unable to object or interrupt when this stipulation was made due to the circumstances in the proceedings of his trial had he been cognizant of the legal consequences.

ARGUMENT

THIS CASE IS THE TYPE WHICH CALLS FOR INVOCATION OF THIS HONORABLE COURT'S CERTIORARI POWER BECAUSE IN THE ABSENCE OF CORROBORATIVE PROOF THAT PETITIONER WAIVED HIS MIRANDA RIGHTS OR THAT HE WAS EVEN GIVEN SUCH WARNINGS THE STATEMENT GIVEN TO THE JURY BY DETECTIVE GERY WAS INADMISSIBLE, VIOLATING PETITIONER'S PRIVILEGE AGAINST SELF-INCRIMINATION.

Petitioner states that this Court should exercise its broad statutory authority and grant him a petition for writ of certiorari pursuant Rule 19,

Rules of the Supreme Court of the United States, because of the "Special" and "Important" reasons and issues involved in this instant case; Rice v. Sioux City Memorial Park Cemetary, Inc., et al., 349 U.S. 70 (1954).

MOREOVER, in this Court's recent case it reiterated the foundations of the foregoing issues; Charles Tague v. State Of Louisiana, NO. 79-5384. Decided January 21, 1980. In granting certiorari this Court stated, inter alia:

> " If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self- incrinination and his right to retain or appointed counsel. Escobedo v. Illinois, 378 U.S. 478, 490, n. 14. This Court has always set high standards of proof for the waiver of constitutional rights, Johnson v. Zerbst, 304 U.S. 458 (1938), and we re-assert these standards as applied to in-custody interrogation. Since the State is responsible for establishing the isolated circumstances under which the interrogation takes place and has the only means of making available corroborated evidence of warnings given during incommunicado interrogation, the burden is rightly on its shoulders." 384 U.S. 436, 475.

And, in this same case, supra, this Court stated:

> " The courts must presume that a defendant did not waive his rights; the prosecution's burden is great...." North Carolina v. Butler, 441 U.S. 369——.

Finally, this Court also stated:

> "IN THIS CASE NO EVIDENCE AT ALL WAS INTRODUCED TO PROVE THAT PETITIONER KNOWINGLY AND INTELLIGENTLY WAIVED HIS RIGHTS BEFORE MAKING THE INCULPATORY STATEMENT. THE STATEMENT WAS THEREFORE INADMISSIBLE".

WHEREFORE, petitioner states that the special and important circumstances in this instant case are equally, if not more important as those cited in Tague v. Louisiana, supra, because it is clear from the record evidence that the inculpatory statement allegedly given to detective Gery and introduced at the petitioner's trial to impeach his alibi defense was inadmissible because it was obtained in violation of petitioner's constitutional rights pursuant Miranda v. Arizona, 384 U.S. 436, 475.

WHEREFORE, for the reasons stated and cited herein your petitioner respectfully

submits that his convictions were obtained by a violation of the privilege against self-incrimination because the inculpatory and extra-judicial statement that detective Gery claims he made was admitted as evidence in violation of the standards set forth in Miranda v. Arizona.

As to petitioner's allegation concerning the overall sufficiency of the evidence at his trial, petitioner argues that absent the inculpatory statement given by detective Gery to impeach his alibi defense that pursuant Jackson v. Virginia, 47 U.S. L.W. 4883, that no rational trier of fact would have found him guilty of every element of the offences beyond a reasonable doubt.

CONCLUSION

WHEREFORE, petitioner respectfully prays that this Honorable Court allow him to proceed in forma pauperis and that the petition for a writ of certiorari be granted, the judgment of the Circuit Court for the City of Richmond, Virginia, Division II, be reversed and/or voided, and this case be remanded to the appropriate State Court for further proceedings not inconsistent with this Court's opinion/s.

RESPECTFULLY SUBMITTED,

Roosevelt E Turner

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CERTIFICATE OF SERVICE

This is to certify that the petitioner, Roosevelt Esau Turner, declares under penalty of perjury that on this 25th day of March, 1980, he mailed a copy of this Petitioner's Brief In Support To Grant Of Certiorari to Mr. Marshall Coleman, Attorney General of Virginia, at Supreme Court-State Library Building, Richmond, Virginia 23219.

Roosevelt E Turner

ROOSEVELT ESAU TURNER, ASSISTED